

SENATE BILL No. 554

DIGEST OF INTRODUCED BILL

Citations Affected: IC 24-5.

Synopsis: Retirement plan proceed loans. Defines a "retirement plan proceed loan" as a loan or an extension of credit that is: (1) offered to an Indiana consumer; and (2) secured by the consumer's interest in, or right to, all or part of the proceeds of any pension or other retirement plan of which the consumer is a participant, beneficiary, or member. Prohibits a person from: (1) making or offering to make a retirement plan proceed loan; (2) brokering or offering to broker a retirement plan proceed loan; or (3) advertising, marketing, or soliciting retirement plan proceed loans in Indiana. Provides that a violation of these provisions is a deceptive act that is: (1) actionable by the aggrieved consumer and the attorney general under; and (2) subject to the penalties and remedies set forth in; the deceptive consumer sales act.

Effective: July 1, 2015.

Randolph

January 20, 2015, read first time and referred to Committee on Insurance & Financial Institutions.



First Regular Session 119th General Assembly (2015)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

SENATE BILL No. 554

A BILL FOR AN ACT to amend the Indiana Code concerning trade regulation.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 24-5-0.5-3, AS AMENDED BY P.L.65-2014,
2 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2015]: Sec. 3. (a) A supplier may not commit an unfair,
4 abusive, or deceptive act, omission, or practice in connection with a
5 consumer transaction. Such an act, omission, or practice by a supplier
6 is a violation of this chapter whether it occurs before, during, or after
7 the transaction. An act, omission, or practice prohibited by this section
8 includes both implicit and explicit misrepresentations.
9 (b) Without limiting the scope of subsection (a), the following acts,
10 and the following representations as to the subject matter of a
11 consumer transaction, made orally, in writing, or by electronic
12 communication, by a supplier, are deceptive acts:
13 (1) That such subject of a consumer transaction has sponsorship,
14 approval, performance, characteristics, accessories, uses, or
15 benefits it does not have which the supplier knows or should
16 reasonably know it does not have.



- 1 (2) That such subject of a consumer transaction is of a particular
2 standard, quality, grade, style, or model, if it is not and if the
3 supplier knows or should reasonably know that it is not.
- 4 (3) That such subject of a consumer transaction is new or unused,
5 if it is not and if the supplier knows or should reasonably know
6 that it is not.
- 7 (4) That such subject of a consumer transaction will be supplied
8 to the public in greater quantity than the supplier intends or
9 reasonably expects.
- 10 (5) That replacement or repair constituting the subject of a
11 consumer transaction is needed, if it is not and if the supplier
12 knows or should reasonably know that it is not.
- 13 (6) That a specific price advantage exists as to such subject of a
14 consumer transaction, if it does not and if the supplier knows or
15 should reasonably know that it does not.
- 16 (7) That the supplier has a sponsorship, approval, or affiliation in
17 such consumer transaction the supplier does not have, and which
18 the supplier knows or should reasonably know that the supplier
19 does not have.
- 20 (8) That such consumer transaction involves or does not involve
21 a warranty, a disclaimer of warranties, or other rights, remedies,
22 or obligations, if the representation is false and if the supplier
23 knows or should reasonably know that the representation is false.
- 24 (9) That the consumer will receive a rebate, discount, or other
25 benefit as an inducement for entering into a sale or lease in return
26 for giving the supplier the names of prospective consumers or
27 otherwise helping the supplier to enter into other consumer
28 transactions, if earning the benefit, rebate, or discount is
29 contingent upon the occurrence of an event subsequent to the time
30 the consumer agrees to the purchase or lease.
- 31 (10) That the supplier is able to deliver or complete the subject of
32 the consumer transaction within a stated period of time, when the
33 supplier knows or should reasonably know the supplier could not.
34 If no time period has been stated by the supplier, there is a
35 presumption that the supplier has represented that the supplier
36 will deliver or complete the subject of the consumer transaction
37 within a reasonable time, according to the course of dealing or the
38 usage of the trade.
- 39 (11) That the consumer will be able to purchase the subject of the
40 consumer transaction as advertised by the supplier, if the supplier
41 does not intend to sell it.
- 42 (12) That the replacement or repair constituting the subject of a



consumer transaction can be made by the supplier for the estimate the supplier gives a customer for the replacement or repair, if the specified work is completed and:

(A) the cost exceeds the estimate by an amount equal to or greater than ten percent (10%) of the estimate;

(B) the supplier did not obtain written permission from the customer to authorize the supplier to complete the work even if the cost would exceed the amounts specified in clause (A);

(C) the total cost for services and parts for a single transaction is more than seven hundred fifty dollars (\$750); and

(D) the supplier knew or reasonably should have known that the cost would exceed the estimate in the amounts specified in clause (A).

(13) That the replacement or repair constituting the subject of a consumer transaction is needed, and that the supplier disposes of the part repaired or replaced earlier than seventy-two (72) hours after both:

(A) the customer has been notified that the work has been completed; and

(B) the part repaired or replaced has been made available for examination upon the request of the customer.

(14) Engaging in the replacement or repair of the subject of a consumer transaction if the consumer has not authorized the replacement or repair, and if the supplier knows or should reasonably know that it is not authorized.

(15) The act of misrepresenting the geographic location of the supplier by listing a fictitious business name or an assumed business name (as described in IC 23-15-1) in a local telephone directory if:

(A) the name misrepresents the supplier's geographic location;

(B) the listing fails to identify the locality and state of the supplier's business;

(C) calls to the local telephone number are routinely forwarded or otherwise transferred to a supplier's business location that is outside the calling area covered by the local telephone directory; and

(D) the supplier's business location is located in a county that is not contiguous to a county in the calling area covered by the local telephone directory.

(16) The act of listing a fictitious business name or assumed business name (as described in IC 23-15-1) in a directory assistance database if:



- 1 (A) the name misrepresents the supplier's geographic location;
2 (B) calls to the local telephone number are routinely forwarded
3 or otherwise transferred to a supplier's business location that
4 is outside the local calling area; and
5 (C) the supplier's business location is located in a county that
6 is not contiguous to a county in the local calling area.
- 7 (17) The violation by a supplier of IC 24-3-4 concerning
8 cigarettes for import or export.
- 9 (18) The act of a supplier in knowingly selling or reselling a
10 product to a consumer if the product has been recalled, whether
11 by the order of a court or a regulatory body, or voluntarily by the
12 manufacturer, distributor, or retailer, unless the product has been
13 repaired or modified to correct the defect that was the subject of
14 the recall.
- 15 (19) The violation by a supplier of 47 U.S.C. 227, including any
16 rules or regulations issued under 47 U.S.C. 227.
- 17 (20) The violation by a supplier of the federal Fair Debt
18 Collection Practices Act (15 U.S.C. 1692 et seq.), including any
19 rules or regulations issued under the federal Fair Debt Collection
20 Practices Act (15 U.S.C. 1692 et seq.).
- 21 (21) A violation of IC 24-5-7 (concerning health spa services), as
22 set forth in IC 24-5-7-17.
- 23 (22) A violation of IC 24-5-8 (concerning business opportunity
24 transactions), as set forth in IC 24-5-8-20.
- 25 (23) A violation of IC 24-5-10 (concerning home consumer
26 transactions), as set forth in IC 24-5-10-18.
- 27 (24) A violation of IC 24-5-11 (concerning home improvement
28 contracts), as set forth in IC 24-5-11-14.
- 29 (25) A violation of IC 24-5-12 (concerning telephone
30 solicitations), as set forth in IC 24-5-12-23.
- 31 (26) A violation of IC 24-5-13.5 (concerning buyback motor
32 vehicles), as set forth in IC 24-5-13.5-14.
- 33 (27) A violation of IC 24-5-14 (concerning automatic
34 dialing-announcing devices), as set forth in IC 24-5-14-13.
- 35 (28) A violation of IC 24-5-15 (concerning credit services
36 organizations), as set forth in IC 24-5-15-11.
- 37 (29) A violation of IC 24-5-16 (concerning unlawful motor
38 vehicle subleasing), as set forth in IC 24-5-16-18.
- 39 (30) A violation of IC 24-5-17 (concerning environmental
40 marketing claims), as set forth in IC 24-5-17-14.
- 41 (31) A violation of IC 24-5-19 (concerning deceptive commercial
42 solicitation), as set forth in IC 24-5-19-11.



(32) A violation of IC 24-5-21 (concerning prescription drug discount cards), as set forth in IC 24-5-21-7.

(33) A violation of IC 24-5-23.5-7 (concerning real estate appraisals), as set forth in IC 24-5-23.5-9.

(34) A violation of IC 24-5-26 (concerning identity theft), as set forth in IC 24-5-26-3.

(35) A violation of IC 24-5.5 (concerning mortgage rescue fraud), as set forth in IC 24-5.5-6-1.

(36) A violation of IC 24-8 (concerning promotional gifts and contests), as set forth in IC 24-8-6-3.

(37) A violation of IC 21-18.5-6 (concerning representations made by a postsecondary credit bearing proprietary educational institution), as set forth in IC 21-18.5-6-22.5.

(38) A violation of IC 24-5-15.1 (concerning retirement plan proceed loans), as set forth in IC 24-5-15.1-4.

(c) Any representations on or within a product or its packaging or in advertising or promotional materials which would constitute a deceptive act shall be the deceptive act both of the supplier who places such representation thereon or therein, or who authored such materials, and such other suppliers who shall state orally or in writing that such representation is true if such other supplier shall know or have reason to know that such representation was false.

(d) If a supplier shows by a preponderance of the evidence that an act resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid the error, such act shall not be deceptive within the meaning of this chapter.

(e) It shall be a defense to any action brought under this chapter that the representation constituting an alleged deceptive act was one made in good faith by the supplier without knowledge of its falsity and in reliance upon the oral or written representations of the manufacturer, the person from whom the supplier acquired the product, any testing organization, or any other person provided that the source thereof is disclosed to the consumer.

(f) For purposes of subsection (b)(12), a supplier that provides estimates before performing repair or replacement work for a customer shall give the customer a written estimate itemizing as closely as possible the price for labor and parts necessary for the specific job before commencing the work.

(g) For purposes of subsection (b)(15) and (b)(16), a telephone company or other provider of a telephone directory or directory assistance service or its officer or agent is immune from liability for publishing the listing of a fictitious business name or assumed business



1 name of a supplier in its directory or directory assistance database
 2 unless the telephone company or other provider of a telephone
 3 directory or directory assistance service is the same person as the
 4 supplier who has committed the deceptive act.

5 (h) For purposes of subsection (b)(18), it is an affirmative defense
 6 to any action brought under this chapter that the product has been
 7 altered by a person other than the defendant to render the product
 8 completely incapable of serving its original purpose.

9 SECTION 2. IC 24-5-15.1 IS ADDED TO THE INDIANA CODE
 10 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 11 JULY 1, 2015]:

12 **Chapter 15.1. Retirement Plan Proceed Loans**

13 **Sec. 1. As used in this chapter, "consumer" means an individual**
 14 **whose principal residence is in Indiana.**

15 **Sec. 2. As used in this chapter, "retirement plan proceed loan"**
 16 **means a loan or an extension of credit that is:**

17 (1) offered to a consumer primarily for personal, family, or
 18 household purposes; and

19 (2) secured by the consumer's interest in, or right to, all or
 20 part of the proceeds of any:

21 (A) pension plan; or

22 (B) other retirement plan, program, or system;

23 of which the consumer is a participant, beneficiary, or
 24 member.

25 **Sec. 3. A person shall not do any of the following:**

26 (1) Make or offer to make a retirement plan proceed loan to
 27 a consumer.

28 (2) Directly or indirectly solicit, process, place, or negotiate a
 29 retirement plan proceed loan for a consumer on behalf of
 30 another person, or otherwise act as a broker of retirement
 31 plan proceed loans in Indiana.

32 (3) Offer to solicit, process, place, or negotiate a retirement
 33 plan proceed loan for a consumer on behalf of another person,
 34 or to otherwise act as a broker of retirement plan proceed
 35 loans in Indiana.

36 (4) Advertise, market, or solicit, through any means or
 37 method, retirement plan proceed loans in Indiana.

38 **Sec. 4. A person that violates this chapter commits a deceptive**
 39 **act that is actionable by an aggrieved consumer and the attorney**
 40 **general under IC 24-5-0.5-4 and is subject to the penalties and**
 41 **remedies set forth in IC 24-5-0.5. An action by the attorney general**
 42 **for violations of this chapter may be brought in the circuit or**



1 **superior court of Marion County.**

